

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | Case No. 2:07-cr-0104-WKW |
| |) | |
| NORMAN EVANS McELROY, JR. |) | |

ORDER

This case is before the court on the government's first Unopposed Motion to Continue Trial. (Doc. # 55.) The criminal case is currently set for trial during the August 18, 2008 term. For the reasons set forth below, the court finds that the trial should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." *Id.* § 3161(h)(8)(A).

The court finds that the ends of justice served by continuing this trial outweigh the best interest of the public and the defendant in a speedy trial. Although this trial has already

been continued four times, the court notes this is the government's first motion for a continuance and that it is unopposed. Furthermore, the unexpected assignment to Iraq by one of the government's key technical witnesses presents an extraordinary and unforeseeable circumstance.

Accordingly, it is ORDERED that the government's Unopposed Motion to Continue Trial (Doc. # 55) is GRANTED. Trial in this matter is continued from the August 18, 2008 trial term, to the criminal term of court beginning **December 1, 2008**. The Magistrate Judge shall conduct a pretrial conference prior to the **December 1, 2008** trial term and enter a pretrial conference order.

DONE this 30th day of July, 2008.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE